
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA

versus

KANDAVIA LA-MIKEE DUNCAN

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CASE NO. 1:22-CR-115(14)

MEMORANDUM AND ORDER

Pending before the court is Defendant Kandavia La-Mikee Duncan's ("Duncan") *pro se* Motion for Sentence Reduction Under 18 U.S.C. § 3582(c)(1)(A) (#695). The Government filed a Response (#705) in opposition. United States Probation and Pretrial Services ("Probation") conducted an investigation and recommends that the court deny Duncan's motion. Having considered the pending motion, the Government's response, Probation's recommendation, the record, and the applicable law, the court is of the opinion that Duncan's Motion for Sentence Reduction (#695) should be dismissed.

I. Background

On November 2, 2022, a federal grand jury in the Eastern District of Texas, Beaumont Division, returned a ten-count Indictment, charging Duncan in Count One with Conspiracy to Possess with the Intent to Distribute, and Distribution of a Controlled Substance (Cocaine HCl and Methamphetamine), in violation of 21 U.S.C. § 846; Count Six with Possession with Intent to Distribute a Controlled Substance: Cocaine HCl, in violation of 21 U.S.C. § 841; and Count Seven with Use and Carry of a Firearm During and in Relation to a Drug Trafficking Offense, in violation of 18 U.S.C. § 924(c). On April 19, 2023, Duncan pleaded guilty to Count One of the Indictment. On May 7, 2024, the court sentenced Duncan to 120 months' imprisonment, to be

followed by five years of supervised release. Duncan is currently housed at Federal Prison Camp Bryan (“FPC Bryan”), located in Bryan, Texas. Duncan’s projected release date is May 2, 2032.

II. Analysis

A. Controlling Law

A judgment of conviction that imposes a sentence of imprisonment is a “‘final judgment’ and may not be modified by a district court except in limited circumstances.” *Dillon v. United States*, 560 U.S. 817, 824 (2010) (quoting 18 U.S.C. § 3582(b)); *see* 18 U.S.C. § 3582(c). Section 3582(c)(1)(A) embodies a rare exception to a conviction’s finality. This statute gives the court discretion, in certain circumstances, to reduce a defendant’s term of imprisonment. The First Step Act of 2018 (“the Act”), Pub. L. No. 115-391, 132 Stat. 5194, in part, amended 18 U.S.C. § 3582(c)(1)(A), which currently provides:

(A) the court, upon motion of the Director of the Bureau of Prisons [(“BOP”)], or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a)¹ to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

¹ Section 3553(a) directs courts to consider: the nature and circumstances of the offense and the defendant’s history and characteristics; the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; the need to deter criminal conduct; the need to protect the public; the need to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; the kinds of sentences and sentencing ranges established for defendants with similar characteristics under applicable United States Sentencing Guidelines (“U.S.S.G.” or “Guidelines”) provisions and policy statements; any pertinent policy statement of the United States Sentencing Commission in effect on the date of sentencing; the need to avoid unwarranted disparities among similar defendants; and the need to provide restitution to the victim. 18 U.S.C. § 3553(a).

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the [BOP] that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission

18 U.S.C. § 3582(c)(1)(A). This provision is commonly referred to as “compassionate release.” *See, e.g., United States v. Escajeda*, 58 F.4th 184, 186 (5th Cir. 2023) (“We often refer to this as ‘compassionate release’ because courts generally use it for prisoners with severe medical exigencies or infirmities.”).

Rather than define “extraordinary and compelling reasons,” Congress elected to delegate its authority to the United States Sentencing Commission (“Commission”). *See* 28 U.S.C. § 994(t) (directing the Commission to “describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples”); *United States v. Jean*, 108 F.4th 275, 278 (5th Cir. 2024), *abrogated on other grounds by United States v. Austin*, 125 F.4th 688, 692 (5th Cir. 2025); *United States v. Jackson*, 27 F.4th 1088, 1090 (5th Cir. 2022); *United States v. Cooper*, 996 F.3d 283, 287 (5th Cir. 2021); *United States v. Shkambi*, 993 F.3d 388, 392 (5th Cir. 2021). Although the Commission issued a policy statement prior to the passage of the Act that described the reasons that qualify as extraordinary and compelling, that policy statement referenced only those motions filed by the Director of the BOP—thus, the United States Court of Appeals for the Fifth Circuit and other courts held that it was inapplicable to motions filed by defendants on their own behalf. *See Jackson*, 27 F.4th at 1090; *Cooper*, 996 F.3d at 287-88; *Shkambi*, 993 F.3d at 392.

Effective November 1, 2023, the Commission—responding to, among other things, the Act—amended the Guidelines to extend the applicability of the policy statement set forth in U.S.S.G. § 1B1.13 to defendant-filed motions and to broaden the scope of what qualifies as “extraordinary and compelling” reasons potentially warranting compassionate release. *See* U.S.S.G. § 1B1.13. Section 1B1.13(b), as amended, identifies six categories of circumstances that may qualify as “extraordinary and compelling.” *Id.* § 1B1.13(b). These categories are:

- (1) the medical circumstances of the defendant;
- (2) the age of the defendant;
- (3) the family circumstances of the defendant;
- (4) whether the defendant was a victim of abuse while in custody;
- (5) other reasons similar in gravity to those previously described; and
- (6) an unusually long sentence.

Id. § 1B1.13(b)(1)-(6). The Fifth Circuit has clarified, however, that “prisoners have extraordinary and compelling reasons for relief ‘only when they face some extraordinarily severe exigency, not foreseeable at the time of sentencing, and unique to the life of the prisoner.’” *Austin*, 125 F.4th at 692 (quoting *Escajeda*, 58 F.4th at 186).

As a result, a prisoner seeking compassionate release on her own motion must satisfy the following hurdles:

- (1) the defendant must have exhausted her administrative remedies;
- (2) “extraordinary and compelling reasons” must justify the reduction of her sentence or she must satisfy the requirements of § 3582(c)(1)(A)(ii);
- (3) the reduction must be consistent with the Commission’s applicable policy statements; and

- (4) the defendant must convince the court to exercise its discretion to grant the motion after considering the § 3553(a) factors.

Jackson, 27 F.4th at 1089; *Shkambi*, 993 F.3d at 392; accord *United States v. Rollins*, 53 F.4th 353, 358 (5th Cir. 2022); see *Austin*, 125 F.4th at 692.

B. Exhaustion of Administrative Remedies

Section 3582(c)(1)(A)’s plain language makes it clear that the court may not grant a defendant’s motion for compassionate release unless the defendant has complied with the administrative exhaustion requirement. 18 U.S.C. § 3582(c)(1)(A); *United States v. Garrett*, 15 F.4th 335, 337 (5th Cir. 2021) (“[T]o file a proper motion for compassionate release in the district court, a prisoner must first exhaust the available administrative avenues.”); *United States v. Franco*, 973 F.3d 465, 467 (5th Cir. 2020) (holding that the statutory requirement that a defendant file a request with the BOP before filing a motion for compassionate release in federal court “is *not* jurisdictional, but that it *is* mandatory”). The exhaustion requirement applies whether the motion is styled as one for compassionate release or merely for a reduction of sentence under 18 U.S.C. § 3582(c)(1)(A). Accordingly, before seeking relief from the court, a defendant must first submit a request to the warden of her facility to move for compassionate release on her behalf and then either exhaust her administrative remedies or wait for the lapse of 30 days after the warden received the request. 18 U.S.C. § 3582(c)(1)(A); *Garrett*, 15 F.4th at 338 (“[A]n inmate has two routes by which he may exhaust his administrative remedies. Both begin with ‘requesting that the [BOP] bring a motion on the defendant’s behalf.’” (quoting *Franco*, 973 F.3d at 467)).

Although this requirement is said to be mandatory, the Fifth Circuit has treated it as “a nonjurisdictional claim-processing rule.” *Franco*, 973 F.3d at 468. “Mandatory but nonjurisdictional procedural filing requirements may be waived.” *United States v. McLean*, Nos.

21-40015, 21-40017, 2022 WL 44618, at *1 (5th Cir. Jan. 5, 2022); *see United States v. Harden*, No. 4:11-CR-127-SDJ, 2025 WL 562716, at *5 (E.D. Tex. Feb. 20, 2025). Therefore, if the Government fails to “invoke § 3582(c)(1)(A)’s exhaustion requirement as a basis for denying relief,” that argument is deemed waived. *McLean*, 2022 WL 44618, at *1.

Here, the Government invokes § 3582(c)(1)(A)’s exhaustion requirement as a basis for denying relief. Duncan acknowledges that she has not exhausted her administrative remedies. In fact, in her motion, Duncan responds to a question posed on her pre-printed form motion asking, “Have you personally submitted your request for compassionate release to the Warden of the institution where you are incarcerated?” She answers, “No, I did not submit a request for compassionate release to the warden” by checking a box preceding the “No.” The form also contains a section immediately following the above question that reads, “If no, explain why not” and provides two lines for an explanation. Duncan gave no explanation and the section remains blank.

Thus, the court is without authority to waive the exhaustion of administrative remedies or the 30-day waiting period. *Franco*, 973 F.3d at 468 (“Congress has commanded that a ‘court *may not* modify a term of imprisonment’ if a defendant has not filed a request with the BOP.”); *see United States v. Harper*, No. 24-30275, 2024 WL 4664018, at *1 (5th Cir. Nov. 4, 2024) (“[B]ecause the Government properly raised the rule requiring exhaustion in the district court, ‘the court *must* enforce the rule.’”); *United States v. Alam*, 960 F.3d 831, 832 (6th Cir. 2020) (“[B]ecause this exhaustion requirement serves valuable purposes (there is no other way to ensure an orderly processing of applications for early release) and because it is mandatory (there is no exception for some compassionate-release requests over others), we must enforce it.”); *United*

States v. Gomez, No. 2:17-cr-41-KS-MTP, 2025 WL 420531, at *2 (S.D. Miss. Feb. 6, 2025) (“Congress used clear language: all requests for compassionate release must be presented to the [BOP] before they are litigated in the federal courts.”); *United States v. York*, No. 17-00086-BAJ-RLB, 2024 WL 3771442, at *3 (M.D. La. Aug. 13, 2024) (recognizing that a court may not modify a term of imprisonment if a defendant has not filed a request with the BOP); *United States v. Garcia*, No. CR 2:18-1337, 2020 WL 3000528, at *3 (S.D. Tex. June 2, 2020) (“While the Court sympathizes with Defendant’s plight, because he has failed to comply with the exhaustion requirements under § 3582, his motion is not ripe for review, and the Court is without jurisdiction to grant it.”); *see also Ross v. Blake*, 578 U.S. 632, 639 (2016) (“[J]udge-made exhaustion doctrines . . . remain amenable to judge-made exceptions,” whereas “mandatory exhaustion statutes . . . establish mandatory exhaustion regimes, foreclosing judicial discretion.”). Therefore, due to her failure to exhaust her administrative remedies, the court has no authority to grant the relief Duncan requests.

III. Conclusion

Based on the foregoing analysis, Duncan’s Motion for Sentence Reduction (#695) is DISMISSED.

SIGNED at Beaumont, Texas, this 29th day of August, 2025.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE